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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
	)	

OPPOSITION

MCI TELECOMMUNICATIONS CORPORATION

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Its Attorneys

Dated: August 18, 1997

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SUMMARY

A number of incumbent local exchange carriers (ILECs) ask the Commission to reconsider its Universal Service Order because it does not guarantee the ILECs recovery of their booked costs and it does not guarantee them the same level of support as they receive today. Thus, petitioners argue that support based on forward looking economic cost and the Commission's transitional universal service measures will effect a taking; and that the Commission's cap on corporate expense and its treatment of DEM weighting and long term support-- namely, that these elements will be supported through the universal service fund and not access charges, and support will be portable-- will reduce their revenues. These arguments, however, fail because the Commission is not required to guarantee the ILECs recovery of their booked costs or a continuation of current revenues. Moreover, the Commission's decision with respect to the use of forward looking economic cost, weighted DEM, LTS and corporate expense, is entirely consistent with the Act's twin goals of ensuring universal service and competition. Accordingly, the Commission must deny these petitions.

The Commission should deny the petitions asking for reconsideration of its rules on support for newly-acquired exchanges. The Commission's order simply acts to prevent transitional support for rural telephone companies from becoming the impetus for the purchase and sale of exchanges.

The Commission should deny the request of the Puerto Rico Telephone Company (PRTC) for "special" treatment for non-rural carriers in insular areas. The PRTC has failed to

explain why a Tier 1 company in an insular area would not enjoy the same economies of scale and scope as a Tier 1 company in a non-insular area.

The Commission's treatment of support for carriers providing universal service services through unbundled network elements ensures fair support for the ILEC and competitive carrier and should not be reconsidered.

The Commission must deny the petition of the Alaska Public Utilities Commission which argues that the Commission should not dictate that federal support be used to reduce interstate access charges because to do otherwise would allow LECs to double recover for supported services-- once through the fund and once through interstate access charges.

Finally, the Commission should deny the petitions of a number of parties-- paging companies, private carriers, systems integrators, payphone providers, private satellite carriers, and non-profit agencies--requesting that they not have to pay into the fund. The Act requires all telecommunications carriers providing interstate telecommunications services to contribute to the fund, and equity requires that all entities that benefit from universal service should contribute to its maintenance.

OPPOSITION

MCI Telecommunications Corporation (MCI) hereby opposes the petitions for reconsideration of the Commission's Universal Service Order as discussed herein.

I. THE COMMISSION'S ORDER DOES NOT EFFECT A TAKING

The Rural Telephone Companies (RTCs) argue that the Universal Service Order will effect a taking because high cost support based on a forward-looking economic cost model will not permit them to recover their embedded investment. The RTCs also argue that the Commission's treatment of rural incumbent local exchange carriers (ILECs) during the interim period prior to the transition to forward looking costs results in an illegal taking without just compensation.[1] Specifically, the RTCs argue that the Commission's order prevents them from earning an 11.25% rate of return on their booked costs, the rate of return on interstate investment set by the Commission.

The RTCs reach this conclusion by misreading applicable Supreme Court precedent. According to the RTCs, Federal Power Comm'n v. Hope Natural Gas, establishes that "[a] rate is considered `confiscatory' if it is not `just and reasonable.'"[2] Since the Commission has concluded that an 11.25% rate of return is "just and reasonable," the RTCs reason, then any rate of return that falls below that number must be a taking.

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[1] RTCs Petition at 2-3.

[2] 320 U.S. 591, 602 (1944).

Neither Hope Natural Gas nor any other Supreme Court case, however, suggests that the rate of return that the Commission has deemed to be "just and reasonable" represents the constitutional minimum and that any rate of return that falls below that number is therefore confiscatory. What these cases do say is that the lowest rate that an agency can set under the "just and reasonable" statutory standard is one that is nonconfiscatory.[3] An agency, of course, is free to set "just and reasonable" rates well above the lowest possible nonconfiscatory rate.[4] It is thus absurd to contend that whatever rate an agency deems to be "just and reasonable" during a particular time period represents a constitutional floor.

Even if the Universal Service Order caused the RTCs to receive a rate of return that was considerably less than 11.25%, there would be no taking. As the Court held in Hope Natural Gas, "regulation does not insure that the [regulated] business shall produce net revenues.'"[5] Thus, any takings claim premised upon entitlement to a guaranteed profit -- let alone a takings claim premised upon entitlement to an 11.25% rate of return -- must fail.

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[3] FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585-866 (1942) ("By longstanding usage in the field of rate regulation, the `lowest reasonable rate' is one which is not confiscatory in the constitutional sense"); see also Permian Basin Area Rate Cases, 390 U.S. 747, 770 (1968); Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254, 1260 (D.C. Cir. 1993).

[4] Northwestern Public Serv. Co. v. Montana-Dakota Utilities Co., 341 U.S. 246, 251 (1950) ("Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. . . . To reduce the abstract concept of reasonableness to concrete expression in dollars and cents is the function of the Commission.").

[5] Hope Natural Gas, 320 U.S. at 603 (quoting Natural Gas Pipeline, 315 U.S. at 590); see also id. at 601 ("[t]he fact that the value is reduced does not mean that the regulation is invalid"); Market St. Ry. Co. v. Railroad Comm'n, 324 U.S. 548, 566 (1945) ("regulation does not assure that the regulated business make a profit"); Permian Basin Area Rate Cases, 390 U.S. 747, 769 (1968) ("[r]egulation may, consistently with the Constitution, limit stringently the return recovered on investment").

The correct standard for assessing whether a takings has been effected is whether the "overall impact of the rate order[] . . . jeopardize[s] the financial integrity of the compan[y], either by leaving [it] insufficient operating capital or by impeding [its] ability to raise future capital." [6] The RTCs cannot meet this stringent standard merely by alleging that their interstate access revenues will decrease.[7] The RTCs could demonstrate a taking only by showing that the Universal Service Order threatened the viability of their entire business, taking into account all inter- and intrastate operations and all lines of business. The RTCs have not even attempted to make such a showing.

In addition, the RTCs calculate their "rate of return" based upon their "booked costs." Indeed, the entire takings argument hinges upon the assumption that they are entitled to recovery of their booked costs. The RTCs' assertion that they are constitutionally entitled to recovery of all of their historical costs -- and that their rate of return must be set based upon their historical costs[8] -- flies in the face of decades of Supreme Court precedent. One need look no further than Duquesne Light Co. v. Barasch,[9] to confirm that regulated carriers are not entitled to recovery of

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[6] Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989).

[7] RTCs Petition at 6 (alleging that "a loss between 8.24% and 38.26% of total annual interstate average schedule settlements" establishes a taking).

[8] At least since the turn of the century, regulatory commissions have employed two basic systems for setting rates -- the historical cost approach and the "fair value" approach. See generally Alfred E. Kahn, The Economics of Regulation 35-41 (1988); Richard J. Pierce, Jr., "Public Utility Regulatory Takings: Should the Judiciary Attempt to Police the Political Institutions?," 77 Georgetown L.J. 2031, 2031 n. 5 (1989). Under the former, utilities receive a fair return on the actual amount of their prudent investments. Under the latter, they receive a fair return on the present value of their assets.

[9] 488 U.S. 299 (1989).

all historical costs. In Duquesne, the Supreme Court considered and dismissed a takings claim challenging the decision of a state regulatory agency to deny a regulated company the opportunity to recover substantial investments which were "prudent and reasonable when made" on the ground that they were no longer "used and useful in service to the public" -- that is, on the ground that they held no present value for consumers.[10] In doing so, the Court concluded that it was perfectly appropriate for rates to be set based upon the "actual present value of the assets employed in the public service" rather than upon their historical costs.[11] Further, the Supreme Court specifically rejected the argument that the Constitution mandates recovery of all historical costs or rates based upon historical costs.[12]

Indeed, for decades the Supreme Court has consistently upheld decisions to deny regulated companies recovery of all historical costs.[13] For example, in Market St Ry. Co. v. Railroad Comm'n,[14] the Supreme Court upheld a decision to set a rate of return based upon the $7.95 million present value of a regulated company's assets even though the "book value" of the property exceeded $41 million and the "historical reproduction cost" of the assets exceeded $25

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[10] Duquesne, 488 U.S. at 301.

[11] Duquesne Light Co., 488 U.S. at 308.

[12] See Duquesne Light Co., 488 U.S. at 315-16.

[13] See, e.g., Wisconsin v. Federal Power Comm'n, 373 U.S. 294, 309 (1963) (rejecting the argument that the "prudent investment, original cost [ratesetting] method" is the "sina qua non" of rate regulation); Denver Union Stock Yard Co. v. United States, 394 U.S. 470, 475 (1938) (holding that a company is constitutionally entitled to reimbursement only for property "used and useful" at the time); Galveston Elec. Co. v. Galveston, 258 U.S. 388, 395 (1922) (no taking as long as a rate is based on the "present reproduction value" of the asset).

[14] 324 U.S. 548, 564-67 (1945).

million. The Court affirmed the agency's decision to calculate the regulated company's rate of return based upon its present, rather than historical, value — thereby denying it recovery of all historical costs — on the ground that

> [T]he due process clause has never been held by this Court to require a commission to fix rates . . . on the historical valuation of a property whose history and current financial statements showed the value no longer to exist, or on an investment after it has vanished, even if once prudently made . . . . The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces.[15]

The only evidence the RTCs have produced to establish their losses are calculations based upon their "historical" or "book" costs. Given that the Supreme Court has long held that no regulated company is entitled to recovery of all historical costs or rates of return based upon book costs, the evidence produced by the RTCs -- even the evidence allegedly demonstrating that some carriers will receive "negative" interstate revenues on their book costs -- cannot be used to establish a takings claim. [16]

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[15] Market St. Ry., 324 U.S. at 567. Indeed, even when agencies set rates based upon the historical cost rather than the present value of the assets devoted to public service, only prudently incurred investments may be recouped. Duquesne Light Co., 488 U.S. at 309. Courts and agencies have further limited regulated utilities' recovery of historical costs to those that hold some present value to consumers. See, e.g., Natural Gas Pipeline Co. of America, 765 F.2d at 1157, 1163-64. As the D.C. Circuit has observed, "'Justice Brandeis' formula for ascertaining the rate base -- the amount of capital prudently invested -- was not to become the prevailing rule.' The general rule . . . is that expenditure of an item may be included in a public utility's rate base only when the item is 'used and useful' in providing service; that is, current rate payers should bear only legitimate costs of providing service to them." NEPCO Mun. Rate Com. v. FERC, 668 F.2d 1237, 1333 (1981) (citations omitted), cert. denied, 457 U.S. 1117 (1982).

[16] See Market St Ry. Co. v. Railroad Comm'n, 324 U.S. 548, 567 (1945) ("The owners of a property dedicated to the public service cannot be said to suffer injury if a rate is fixed . . .

The RTCs attempt to buttress their constitutional argument by asserting that the Universal Service Order unlawfully penalizes them "for making past investments in reliance on their ability to gain a fair return...".[17] Thus, the RTCs imply that their investments were based upon some specific promise or guarantee that the Universal Service Order is now abrogating. The RTCs' reliance argument is as flawed as their other takings arguments.

As a purely factual matter, the RTCs could not have relied upon a guarantee that they would recover all historical costs when making their investments because no such promise was ever made. As the Commission has observed, any claim by an incumbent telephone company to guaranteed recovery of all historical costs "would exceed the assurances that we or the states have provided [to the ILECs] in the past."[18] The RTCs' reliance argument is also foreclosed as a matter of law. The Supreme Court has held for decades that regulated companies are not entitled to recovery of all historical costs.[19]

When the RTCs' reliance argument is analyzed against this factual and legal backdrop, it is clear that there is simply no basis for their claim that they "relied" on some promise or assurance given by the states that they would be guaranteed recovery of all historical costs. The

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which will probably produce a fair return on the present fair value of their property").

[17] RTCs Petition at 7.

[18] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC 96-325 at ¶ 706 (rel. Aug. 8, 1996).

[19] See Duquesne Light Co., 488 U.S. at 312-314 (concluding that requiring agencies to set rates based upon historical costs would "signal a retreat from 45 years of decisional law in this area"); supra pp. 4-6 & nn. 3 & 4.

RTCs have not pointed to any such promise in their filings, and decades of Supreme Court precedent refute its existence.

Nor can the RTCs claim that they are constitutionally entitled to maintenance of the regulatory status quo. The relationship between the ILECs and the government is a regulatory, not a contractual, relationship, and as such does not grant them a vested right in the maintenance of a particular regulatory scheme.[20] Indeed, even if the RTCs could produce a written contract explicitly outlining the "guarantee" on which they allegedly relied, the courts have long eschewed contractual agreements which "bind [the government] to ossify the law" and thus restrict the future exercise of legislative power.[21]

As shown above, the RTCs would not establish a constitutional takings claim even if they were able to demonstrate that the Universal Service Order threatened serious financial consequences for rural carriers. In fact, however, no such threat exists. In order to guard against such consequences, the Commission has afforded rural telephone companies years of subsidies

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[20] See Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U.S. 118, 141 (1939) ("[t]he declaration of a specific policy creates no vested right to its maintenance in utilities then engaged in the business or thereafter embarking in it"); American Trucking Ass'n v. Atchison, Topeka and Santa Fe Ry. Co., 387 U.S. 397, 416 (1967) (agencies "are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday"); New York Cent. R.R. v. White, 243 U.S. 188, 198 (1917) ("No person has a vested interest in any rule of law entitling him to insist that it will remain unchanged for his benefit"); Rogers Truckline v. United States, 14 Cl. Ct. 108, 110-12 (1987) (a regulated carrier has no constitutionally protected property interest in an existing regulatory scheme); General Telephone Co. of the Southwest v. United States, 449 F.2d 846, 864 (5th Cir. 1971) ("[t]he property of regulated industries is held subject to such limitations as may reasonably be imposed upon it in the public interest and the courts have frequently recognized that new rules may abolish or modify pre-existing interests").

[21] United States v. Winstar Corp. 116 S. Ct. 2432, 2453-56 (1996) (plurality opinion) (surveying doctrines precluding agreements to limit the legislature's power to change the law).

that exceed those that could be justified by proper economic analysis. Thus, the Universal Service Order provides that rural companies will continue to receive support derived from the existing high cost, DEM and long-term support mechanisms. This support will continue until the Commission devises a forward-looking cost methodology for rural companies and for transitioning to that new methodology. For the next several years, then, rural telephone companies will continue to receive universal service support at substantially the levels they currently enjoy.

The RTCs complain that making universal service support and the recovery of local switching costs via DEM weighting portable, in lieu of being used to recover booked investment, has "immediate and adverse consequences" for the RTCs.[22] But this is a necessary consequence of the generous transition rules the Commission adopted for rural companies. As the Commission observed, it would unfairly skew competition to afford ILECs with subsidies based on the existing methods but limit CLECs to smaller, forward-looking compensation when they serve the very same customers.

The Commission allowed rural carriers to continue using existing support mechanisms for the immediate future as a *transitional* device, not based on a finding that rural ILECs were entitled to universal service support computed based upon booked costs. To the contrary, the Commission has ruled that rural carriers should (like all other carriers) eventually receive universal service support on a forward-looking cost basis. The Commission should not transform a limited (although generous) transition device into an entitlement to recovery of booked costs through the universal service fund.

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[22] RTCs Petition at 7.

Finally, the Commission has announced its intention to take up the issue of ILEC recovery of historic costs in a future proceeding in the Access Charge Reform docket.[23] If there is any basis to recover booked costs, the RTCs may establish it in the regulatory proceeding dedicated to that question.

II. THE TREATMENT OF DEM WEIGHTING AND LONG TERM SUPPORT

Some LECs take issue with the Commission's treatment of DEM weighting and Long Term Support (LTS) during the transition to the use of a forward looking cost methodology for determining universal service support. For example, the RTCs argue that it is arbitrary to treat DEM weighting payments as "subsidy" and to recover them through the Universal Service Fund USF). [24] Because DEM weighting is allegedly compensation for switching costs incurred to provide interstate access services, these parties argue, it should be recovered from interexchange carriers, "the entities that cause small ILECs to incur the lion's share of their switching costs."[25] Moreover, the RTCs argue that, by first changing the existing DEM weighting rules and eventually eliminating DEM weighting entirely, the Commission has created a subsidy program for IXCs by shifting costs away from them and onto the backs of all USF contributors.[26]

Contrary to these contentions, the Commission has not created a new subsidy. Consistent

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[23] In re Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, FCC 97-158 at ¶ 14 (Access Charge Order).

[24] RTCs Petition at 12.

[25] RTCs Petition at 13.

[26] RTCs Petition at 13.

with the Act, the Commission has simply made an existing implicit subsidy, DEM weighting, explicit and portable. Even if DEM weighting does compensate small carriers for real costs incurred in providing access, they still constitute an implicit "subsidy" within the meaning of Section 254. That is, they are payments embedded in switched access charges that are designed to ensure that local customers in "high cost areas" "have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas." Because DEM weighting payments are Section 254 subsidies, Congress has specifically directed that they be funded "on an equitable and nondiscriminatory basis" by "[e]very telecommunications carrier that provides interstate telecommunications services."[27]

United Utilities argues that the universal service order should be postponed until the Commission has completed the reform of its Part 36 jurisdictional cost separations rules.[28] United Utilities also urges the Commission to change the method by which it assigns costs to the interstate and intrastate jurisdictions from DEM weighting to SMOU (switched minutes of use).[29]

United Utilities' request that the Commission change the allocation from DEM to SMOU is not appropriately before the Commission in this proceeding. While the Commission has the authority to change the way in which subsidies are funded, a change in allocator (e.g., from DEM to SMOU) requires a Joint Board determination.

In addition, United Utilities' request to delay the implementation of the universal service order should be rejected, as it is simply an anticompetitive tactic aimed at prolonging its

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[27] Section 254(d).

[28] United Utilities Petition at 2.

[29] United Utilities Petition at 2-3.

monopoly status. The expressed goal of the Act is to promote competition in all telecommunications markets. The Commission's universal service order is a necessary component in fulfilling the goal of the Act, as it aims to make implicit subsidies explicit and portable. The new universal service rules do not significantly alter the amount of subsidies that ILECs will receive per customer. The primary difference is that support will come from the universal service fund-- not access charges. No economic reason, therefore, exists for the Commission to delay the implementation of the universal service order until after the Commission reforms its Part 36 separations rules.

The Commission also should dismiss the RTCs' argument that the new USF rules violate Section 254(b)(2) because the rule change will discourage investment in advanced telecommunications information services.[30] On the contrary, the Commission's rules replacing DEM weighting with USF support makes an implicit subsidy explicit and portable and, therefore, the new rules will spur competition. Competition, in turn, will lead to lower prices, more choice, greater innovation and alternative and more efficient information services.

The Western Alliance argues that the transfer of weighted DEM and long term support (LTS) to the USF may create a two-year lag in receipt of such support, with the result that support would not be "sufficient."[31] No time delay will ocurr from the transfer of weighted DEM and LTS to the USF. The Commission should, therefore, dismiss the Western Alliance's argument.

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[30] RTCs Petition at 15.

[31] Western Alliance Petition at 11.

III. THE TREATMENT OF CORPORATE EXPENSE IS NOT ABITRARY

Some LECs argue that it was arbitrary for the Commission to limit high-cost support payments for "corporate operations expenses" because, for example, the limit on support for corporate operations expenses will reduce their revenues.[32] The Commission's stated basis for limiting recovery of these costs was that they were "not directly related to the provision of subscriber loops and not necessary for the provision of universal service" and resulted not from the provision of essential telecommunications services, but "rather result from managerial priorities and discretionary spending."[33] The parties offer nothing to rebut the Commission's finding that corporate operation expenses are discretionary and not inherent to the provision of universal service. Accordingly, the limit on universal service support for these costs is plainly appropriate and the LECs should consider themselves fortunate that the Commission permitted any support for these costs. The Commission plainly did not act arbitrarily in limiting the recovery of these costs to 115 percent of the average corporate operations expenses for similarly sized companies.[34] For the same reason, a three year transition to the reduction in corporate expense operations, as requested by Fidelity Telephone Company, is not justified.[35]

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[32] RTCs Petition at 10-11; USTA Petition at 10; Alaska Telephone Association Petition at 2-3; Western Alliance Petition at 8-10.

[33] Universal Service Order, ¶ 283.

[34] Universal Service Order, 307. See also, Order on Reconsideration, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-246 (rel. July 10, 1997) (modifying formula for reaching 115 percent cap for certain carriers).

[35] Fidelity Telephone Company Petition at 3-4.

IV. SUPPORT FOR ACQUIRED EXCHANGES

There is no merit to the LECs' argument that the Commission's rules on support for newly-acquired exchanges will discourage investment in rural telephone companies.[36] The Commission simply acted to prevent its transitional support for rural telephone companies from becoming the impetus for the purchase and sale of exchanges. Accordingly, the Commission held that for purchases occurring after the date of its order, the support afforded the exchange would not change depending on the rural or non-rural status of the purchaser.[37] This decision was reasonable.

V. INSULAR AREAS

Puerto Rico Telephone Company argues that carriers serving insular areas should be treated differently than carriers in non-insular areas. Specifically, PRTC contends that it should not be grouped with the Bell Operating Companies (BOCs) for modeling and transition purposes because it does not have the economies of scale or scope of a BOC.[38] The PRTC, however, fails to explain why a Tier 1 telephone company in an insular area would not enjoy the same economies of scale and scope-- which, for the most part, are an incidence of size-- as a Tier 1 telephone company in a non-insular area. In other words, although PRTC alleges that it has a low penetration rate, it serves enough customers and has sufficient revenue to qualify as a Tier 1 company. Accordingly, no rule change for non-rural carriers in insular areas is warranted.

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[36] Western Alliance Petition at 12-13; RTCs Petition at 21; USTA Petition at 7-8.

[37] Universal Service Order ¶ 308.

[38] Puerto Rico Telephone Company Petition at 7-12.

VI. UNES

Some petitioners ask the Commission to reconsider its decision concerning unbundled network elements (UNEs) and universal service support. For example, the Western Alliance argues that the Commission should not define UNEs as "owned" facilities for the purposes of determining carriers eligible to receive universal service and that doing so violates congressional intent to encourage rural infrastructure development.[39] Thus, the Alliance argues that only carriers that own all or substantially all of their own facilities should qualify for support. Similarly, US West argues that the incumbent LEC should get the support associated with an unbundled loop and the competitive LEC that purchases unbundled loops should benefit from support only indirectly as a result of the support-adjusted unbundled loop price they pay for the facility.[40]

The Commission was right in designating UNEs as the purchasing carrier's facility. In addition, carriers providing supported services solely through the use of UNEs can only receive support up to the UNE charge, and anything over this amount is remitted to the underlying carrier. In addition, the unbundled loop price fully compensates the ILEC for the cost of the underlying facility. Thus, carriers purchasing unbundled loops will not be overcompensated by the universal service fund.

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[39] Western Alliance Petition at 22-23.

[40] US West Petition at 15-19.

VII. USE OF UNIVERSAL SERVICE SUPPORT REVENUE

The Alaska Public Utilities Commission (PUC) argues that the Commission should not dictate that federal support be used to reduce interstate access charges.[41] Interstate access charges, however, must be reduced by the amount of federal universal service support received, because to do otherwise would allow LECs to double recover for supported services-- once through the fund and once through interstate access charges. There is no dispute that interstate access charges subsidize universal service. As those subsidies are provided explicitly through the fund, therefore, the implicit subsidy must be removed.

A number of petitioners also ask the Commission to reconsider its plan to fund only 25% of the high cost fund, arguing that it is not sufficient to maintain universal service.[42] Whatever amount federal support is ultimately, ILECs must be required to reduce interstate access charges by the amount of support received.

VIII. USE OF NATIONWIDE AVERAGE LOOP COST

The RTCs argue that adjusting the nationwide average loop cost for inflation would be unfair, noting that some carriers' costs have risen faster than the nationwide average loop cost, and that the USF was intended precisely to give these carriers support.[43] However, the carriers

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[41] Alaska PUC Petition at 9.

[42] RTCs Petition at 9; Alaska Telephone Association Petition at 1-5; Western Alliance Petition at 18-21; Rural Telephone Coalition Petition at 1-5; Arkansas Public Service Commission at 1-3; Wyoming Public Service Commission at 2-3; Vermont DPS Petition at 2-5; Alaska Public Utilities Commission Petition at 5-9; Texas Public Utility Commission Petition at 2.

[43] RTCs Petition at 22.

whose costs rise faster than inflation (i.e., the less efficient ones) will see their support go up under the Commission's order, while carriers whose cost grow slower (i.e., the relatively efficient ones) will see their support go down. This incentive to increased efficiency was cited by the Commission as a reason for its decision. The carriers it seeks to protect, whose costs rise by more than inflation, will actually see their support go up even with the cap.

IX. ENTITIES REQUIRED TO PAY FEDERAL SUPPORT

A number of petitioners-- including paging companies, private carriers, systems integrators, payphone providers, private satellite carriers, and non-profit agencies-- argue that it would be inequitable and anticompetitive to require them to pay federal universal service support.[44] The Act, however, requires that all telecommunications carriers providing interstate telecommunications services contribute to the fund. Moreover, equity requires that entities that benefit from universal service also should contribute to its maintenance. Accordingly, these petitions should be denied.

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[44] Ozark Telecom Petition at 3-5; Ad Hoc Telecommunications Users Committee Petition at 11-22; Information Technology Association of America Petition at 1-9; Iowas Telecommunications and Technology Commission Petition at 7-8; Columbia Communications Corporation Petition at 3-5.

X. CONCLUSION

Based on the foregoing, MCI respectfully requests that the Commission reject the petitions for reconsideration as specified herein.

Respectfully submitted,

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Dated: August 18, 1997

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